

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER TO SHOW CAUSE
00-CR-199S

MARK McCREARY,

Defendant.

1. On March 14, 2001, the Grand Jury for the Western District of New York issued a forty-six count Superceding Indictment charging nineteen Defendants, including Defendant Mark McCreary, with various drug offenses.

2. On September 10, 2003, Mr. McCreary appeared before this Court and pled guilty to Count 1 of the Superceding Indictment, which charges a violation of Title 21, United States Code, Section 846, or Conspiracy to Possess with Intent to Distribute and to Distribute 5 Kilograms or More of Cocaine.

3. Sentencing in this matter was adjourned numerous times prior to October 28, 2004. On that date, Mr. McCreary appeared before this Court for sentencing and expressed his desire to withdraw his plea and raise the issue of ineffective assistance of counsel.

4. After determining that a change of counsel was warranted, this Court entered an Order on April 7, 2005, appointing new counsel for Mr. McCreary. Sentencing was scheduled for August 1, 2005, but was adjourned until October 13, 2005, upon the request of Defendant's counsel.

5. On September 19, 2005, Defendant's Counsel filed a substantive motion with respect to sentencing factors. A review of the docket reveals that the Government has not filed a response to Defendant's motion.

7. Given that this matter has been pending before this Court for several years, and that the Government has failed to file a response to Defendant's motion in a manner consistent with diligent prosecution,

IT HEREBY IS ORDERED that the Government shall appear before this Court on **October 13, 2005, at 9:00 a.m.** in Part IV, United States Courthouse, 68 Court Street, Buffalo, New York to show cause why Mr. McCreary's sentencing should not go forward, and why the relief requested in his motion should not be granted as unopposed.

FURTHER, that counsel for Defendant and the Defendant shall also appear on that date.

SO ORDERED.

Dated: October 7, 2005
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge